Cobb Theatres, Inc. *and* International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local No. 144. Case 26-CA-8785

March 11, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On October 27, 1981, Administrative Law Judge Arline Pacht issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order,[2] as modified below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified herein, and hereby orders that the Respondent, Cobb Theatres, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified below:

1. Substitute the following for paragraph 2(c):

"(c) Restore those contributions to the pension fund which existed prior to the unilateral discontinuance of these contributions on or about October 29, 1980, for the employees in the unit described above and make them whole for any loss of expense they may have suffered as a result of the unilateral change and pay into the pension trust fund all those contributions it has failed to pay by reason of the unilateral change, in the manner described in 'The Remedy' until such time as a new agreement is negotiated with the Union or an impasse is reached regarding this issue."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly we assure you that:

WE WILL NOT refuse to bargain collectively with International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local No. 144, as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All motion picture machine operators employed by us at our Fare 4 and Frayser 3 Theatres in Memphis, Tennessee.

WE WILL NOT withdraw recognition and refuse to meet with the Union as exclusive collective-bargaining representative of employees in the said unit.

WE WILL NOT, without prior consultation and bargaining with the Union, effect any changes in existing terms and conditions of employment of employees in the above-described appropriate unit, including unilaterally discontinuing payments to the union pension fund, nor dishonor other substantive terms, as

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

However, in finding that Sec. 10(b) did not preclude amending the complaint at the hearing, the Administrative Law Judge relied, in part, on a finding that Respondent suffered no prejudice by having to litigate the amendments to the complaint. We do not rely on this reasoning in determining that Sec. 10(b) would allow the amendments. Rather, inasmuch as the allegations set forth by amendment to the complaint related back to the matters set forth in the original complaint, the amendments were properly allowed.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

set forth in the collective-bargaining agreement.

WE WILL NOT make unilateral changes in our employees' wages, rates of pay, or other terms and conditions of employment, or in any similar or related way refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of employees in said unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL make payments to the union pension fund from the date we unilaterally discontinued such payments, and continue such payments until such time as we negotiate a new agreement with the Union or reach an impasse regarding this subject matter.

WE WILL restore the wage rates which existed prior to the date on which the collective-bargaining agreement expired and make you whole for any losses of pay, plus interest, you may have suffered by reason of our unilaterally changing these wage rates, and will continue such wage rates until such time as we negotiate a new agreement with the Union or reach an impasse regarding these matters.

WE WILL bargain collectively with the Union, upon request, as the collective-bargaining representative of employees in the appropriate unit and, if an understanding is reached, WE WILL sign a contract with the Union.

COBB THEATRES, INC.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: This case was heard on September 2, 1981, in Memphis, Tennessee, upon a charge filed on December 17, 1980, by International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local No. 144 (hereinafter the Union or Local 144), and a complaint issued on January 30, 1981, and was amended at the hearing, alleging that the Respondent, Cobb Theatres, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act by withdrawing recognition from the Union, and thereafter terminating payments to the Union's pension fund and instituting other unilateral cnanges in the employees' terms and conditions of employment.[1] The Respondent filed timely answers, and briefs were submitted by both parties.

Upon the entire record,[2] including my observation of the witnesses and consideration of the briefs, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER AND THE LABOR ORGANIZATION INVOLVED

The Respondent, with an office and place of business in Memphis, Tennessee, is engaged in the retail operation of theaters exhibiting motion pictures. Annually, in the course and conduct of these business operations, Respondent derived gross revenues in excess of $50,000 and received at its Memphis facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Tennessee. Accordingly, I find that the Respondent is now, and has been at all material times herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is now, and has been at all material times herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ISSUES

The issues to be resolved in this case are: (1) whether the Respondent's admitted withdrawal of recognition and refusal to meet or bargain with the Union after October 29, 1980, was based on objective considerations giving rise to a good-faith doubt that the Union represented a majority of its employees; (2) whether the Respondent's unilateral alterations of certain terms and conditions of employment, instituted after the contract's expiration, violated Section 8(a)(5) and (1) of the Act; and (3) whether amendments to the complaint on the day of the hearing were time-barred by Section 10(b) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Events Prior to the Contract's Termination*

From May 1971 through August 1980, the Respondent voluntarily recognized the Union and entered into successive collective-bargaining agreements covering all projectionists at its Memphis movie theaters.[3] The most recent contract, executed in 1977, was due to expire on August 31, 1980.

Three months prior to that date, on May 22, 1980, John McAfee, the Local's corresponding secretary and member of the negotiating committee, notified Stephen Biller, the Respondent's counsel, of the Union's intent to

[1] The complaint was amended to allege that the Respondent unilaterally altered the terms and conditions of employment without first bargaining with the Union by ceasing to pay employees for (a) a minimum 4-hour shift; (b) overtime rates for maintenance work; (c) quarterly hour increments for overtime; (d) time and one-half for midnight shift work; (e) work during screening at a per-reel rate with a 10-reel per-screen minimum; and (f) failing to guarantee a 40-hour week at its Fare 4 and Frayser 3 Theatres.

[2] Errors in the transcript have been noted and corrected.

[3] The appropriate unit is described in the complaint as "All motion picture machine operators employed by the Respondent at its Whitehaven 2, Fare 4 and Frayser 3 Theatres in Memphis, Tennessee." At the time of the hearing, the Respondent owned only the latter two theaters, employing a total of two projectionists.

terminate the agreement and negotiate a new one.[4] McAffe's letter also set forth the Union's disagreement with management's decision to institute split-shift payments for the projectionists, and expressly reserved the right to negotiate the dispute during conferences for a new collective-bargaining agreement.[5] Copies of this letter were sent to Norm Levinson, vice president of Cobb Theatres, Al Goddard, then manager of Cobb Theatres in Memphis,[6] and J. E. Johnson, the Union's International vice president.

Biller made no written response to McAfee's letter until August 22. However, during the preceding 3-month period, union representatives attempted to communicate with other company officials. Thus, at the Local's request, J. E. Johnson telephoned Levinson at his Birmingham, Alabama, office on several occasions in July. Although he advised Levinson's secretary of his name and position and indicated that the purpose of his call was to arrange negotiations for a new contract for the Local, he received no immediate reply.[7]

Having received no response to his May 22 letter, McAfee requested another union officer to approach Levinson while both were attending the Union's international conference in Florida at the end of July and prevail upon him to call Johnson. Shortly after the conference concluded, Levinson did telephone Johnson and, when questioned as to whether it would be possible to work out a contract, said he saw no reason which would prevent it. Johnson did not schedule a meeting date because, as he explained to Levinson, he was preparing to negotiate collective-bargaining agreements with 31 other companies.

Later in August, Johnson testified that Biller telephoned him to ask whether he would object to his representing the Respondent in negotiations. However, Biller vehemently denied having made such call.[8]

On August 22, Biller acknowledged McAfee's May 22 letter, writing that since the contract was to expire on August 21 "it is incumbent upon Local 144 to advise Cobb Theatres of its proposed changes in the current bargaining agreement" and to advise the Respondent of proposed meeting dates. Biller added that the Respondent would maintain the *status quo ante* "for only so long as it is legally obligated to do so" and closed with a request that all correspondence regarding Cobb Theatres be sent directly to him.[9]

McAfee's response was quick. By letter dated August 25, he advised Biller that Johnson would be assisting the Union in its negotiations and that the Local anticipated hearing from Johnson shortly as to projected meeting dates.

B. *Events After the Contract's Expiration*

For the next 2 months, no correspondence passed between the parties. Then on October 29, 1980, Biller wrote to McAfee that having heard nothing from the Union since the contract's expiration on August 31, and "In view of Local 144's demonstrated lack of interest in representing the projectionists . . . ." Cobb Theatres was withdrawing recognition from the Union. The letter also noted that the Respondent would cease making contributions to the pension plan or entertaining grievances. The Respondent acknowledged that on or about the same time, it unilaterally altered a number of other terms and conditions of employment previously enjoyed by the projectionists under the provisions of the expired collective-bargaining agreement.

On receiving this letter, Business Agent Federicci telephoned that it would be a waste of time to talk. Federicci then asked Al Goddard for the names of others in the Respondent's organization who might be amenable to bargaining and was referred to Dick Empey. Several days later, on November 13, McAfee wrote to Empey requesting an appointment to negotiate a new contract. This admittedly was the first time that such a specific request was made. Biller answered for Empey on November 20, and rejected the Union's overture, stating tersely that, since recognition had been withdrawn, Cobb Theatres was "not interested in making an appointment for negotiating a new contract."

Since the contract's expiration date, the Respondent has not called upon the Union for replacements. However, union members have continued working for Respondent while continuing to pay their union dues to the present time.

In addition to the facts as found above, the parties entered into a number of stipulations bearing on the Respondent's assertion that it held a good-faith doubt as to the Union's continued majority support: they agreed that no union employees had indicated they had resigned

---

[4] The contract was to remain in effect from year to year unless either party desiring to change or terminate it notified the other in writing at least 90 days prior to the anniversary date. Once that notice was given, the contract further stated that "the parties shall meet and confer to negotiate regarding the changes in or termination of this Agreement."

[5] By letter of April 4, 1980, to the Respondent's theater manager, Al Goddard, the business agent for Local 144, John Federicci, registered a complaint about the split-shift payments introduced by the Company several months earlier. While the conflict remained unresolved, the employees continued working under the split-shift system. The Union chose not to pursue the matter through the nonmandatory arbitration procedure provided in the contract.

[6] Goddard retired as manager in January 1981.

[7] Counsel for Respondent suggested that if Levinson were to testify, he would deny having telephoned Johnson in August. However, neither Levinson nor his secretary was called as a witness. Therefore, Johnson's testimony in this regard stands unrefuted as the Respondent offered no valid reason for failing to call them. Counsel further suggested that Johnson had no reason to call Levinson in early August since the Local did not request his participation in collective bargaining until August 25 as evidenced by McAfee's letter of that date. This argument fails to take into account the fact that Johnson was copied with the Local's May 22 letter. It is unlikely that McAfee would have distributed this letter to Johnson unless he previously had invited him to join in the negotiations. Further, McAfee corroborated Johnson's version of the sequence of events, stating that, after learning that Johnson had not succeeded in reaching Levinson, he had suggested contacting him through another union intermediary.

[8] Obviously, someone is in error about whether or not this telephone call occurred. However, there was nothing in either Johnson or Biller's demeanor which would provide guidance in resolving this dispute. Neither were any intrinsic or extrinsic aids such as telephone logs, billing records, or long distance telephone bills introduced which might shed some light on the matter. Since a disposition of the legal issue in this case is not dependent on resolving this puzzling matter, I decline to discredit either witness.

[9] Since McAfee's previous correspondence was directed to Biller, I infer from the attorney's concluding comment that he had learned of the Union's efforts to contact other management representatives.

from or wished to resign from the Union; no decertification petition was filed, the Union continued to hold regular business meetings but had not given notice to the Federal Mediation and Conciliation Service pursuant to Section 8(d) of the Act. Further, the parties stipulated that from June 1, 1975, to June 1, 1977, while the parties were negotiating a new contract, employees continued to work under the terms of the expired collective-bargaining agreement.

Analysis

It is well settled that an incumbent union, whether Board certified, or as here, voluntarily recognized, enjoys an irrebuttable presumption of majority status during the life of the collective-bargaining agreement. Following the contract's expiration, a rebuttable presumption continues with the burden of rebutting by clear and convincing evidence imposed upon the party who would do so, here the Respondent. *Pioneer Inn Associates, et al.*, 228 NLRB 1263, 1265 (1977), affd. 578 F.2d 835 (9th Cir. 1978). It follows that an employer may not raise a doubt about a union's majority during the contract year as a defense to a refusal to bargain, regardless of the degree to which the union may have been deficient in administering the agreement. *Pioneer Inn Associates* v. *N.L.R.B., supra* at 838. After the contract has expired, the presumption may be overcome by the employer's establishing a good-faith doubt based on objective considerations that the union no longer enjoys majority support. *Bellwood General Hospital, Inc.*, 243 NLRB 88 (1979), enforcement denied 627 F.2d 98 (7th Cir. 1980).

A. *Respondent's Asserted Good-Faith Doubt*

In supporting its assertions of good-faith doubt in the present case, the Respondent contends that the Union's inactivity over a 7-month span constituted an abandonment of its employee-members. Specifically, the Respondent pointed to the Union's failure to request a specific date for negotiations prior to November 13, to submit new contract proposals, or to seek arbitration with respect to the institution of split-shift payments. The Respondent correctly asserts that its good faith must be evaluated in light of all the circumstances available to it at the time recognition was withdrawn. After making such an evaluation, I am unconvinced that the Respondent reasonably believed the Union intended to abandon its employees.

The Union conceded that at no time prior to November 13 did it request a precise date for bargaining. This omission may be viewed as somewhat negligent, but it falls far short of an abandonment.

To the contrary, there is ample evidence which demonstrates beyond any doubt that the Union was interested in and intent on bargaining. On May 22, by giving notice of termination in accordance with the procedures prescribed by the parties' agreement, the Union unmistakably signaled that its purpose was to commence a new round of negotiations. Thereafter, over the course of the summer, the Union made repeated efforts to contact management officials. On August 25, 3 days before the contract expired, McAfee replied promptly to Biller's long-overdue letter. This course of conduct was not indicative of an indifferent or defunct union. Thus, the Respondent's efforts to convert the Union's merely dilatory behavior into disinterest and desertion are totally unpersuasive.

The only real gap in communication between the parties occurred between August 25 and October 29, 1980. This brief period of time is hardly adequate to give rise to a good-faith doubt that the Union had no interest in representing its membership.[10] This is particularly true where the Respondent was alerted to the possibility of delay because of Johnson's involvement in other contract negotiations.

Further, the Respondent was not entitled to draw adverse inferences from the Union's failure to produce written contract proposals as the Company demanded. An employer's insistence that a union bargain by mail or submit its proposals in writing may in itself suggest bad-faith bargaining. See, e.g., *Duro Fittings Company*, 121 NLRB 377 (1958). Neither could the Respondent in good faith regard the Union's decision not to grieve the unilateral implementation of split-shift payments as acquiescence. See *Bellwood General Hospital, supra* at 89–90; *Sierra Development Company d/b/a Club Cal-Neva*, 231 NLRB 22 (1977), affd. 604 F.2d 606 (9th Cir. 1979) (failure to invoke grievance procedures not grounds for good-faith doubt). The Union was not obliged under the collective-bargaining agreement to arbitrate its disagreement with management's construction of the contract. Instead, the Union made a reasoned decision to resolve the dispute in the less expensive, less litigious forum provided by the forthcoming negotiations and expressly notified the Respondent of its intent to do so. In these circumstances, the Respondent's contention that the Union abdicated its responsibilities on this issue borders on the frivolous.

Neither can the Respondent credibly maintain that it was misled by the Union's failure to protest other unilateral changes in contractual terms after the contract expired. It is incongruous that the Respondent faults the Union for failing to pursue these matters when it adamantly refused to meet with or talk to union representatives at all after October 29. Under the National Labor Relations Act, exercises in futility are not required.

Further, no other objective evidence was presented which would signal that the Union's majority had dissipated. None of the conventional signals of employee discontent was present here—no decertification petition was filed, no employee voiced dissatisfaction with the Union to management, and there was little employee turnover. In fact, the employees never ceased paying union dues and the Local continued holding regularly scheduled meetings. Although the Respondent may not have been aware of these facts on October 29, neither did it have or seek knowledge to the contrary. Therefore, the Company had no reasonable basis at the time it refused to bar-

[10] Compare *Southern Wipers, Inc.*, 192 NLRB 816 (1971) (8 month period of union inactivity, coupled with heavy employee turnover and expressions of disaffection, sufficient to substantiate good-faith doubt) with *Featherwood Drilling Company*, 209 NLRB 618 (1974) (10-month delay insufficient).

gain for believing that majority support for the Union no longer existed. See *Bartenders, Hotel, Motel and Restaurant Employers Bargaining Association of Pocatello, Idaho and its Employer-Members*, 213 NLRB 651 (1974).

In sum, I conclude that the Respondent's avowals that it had a good-faith doubt of the Union's majority support were disingenuous. Accordingly, I conclude that its withdrawal of recognition and refusal to meet or bargain with the Union were not grounded on objective considerations and therefore violated Section 8(a)(5) and (1) of the Act.

B. *The Unilateral Contract Changes*

Where, as here, the Respondent was obligated to bargain with the Union, it may not unilaterally change wages, hours, and other terms and conditions of employment. *Henry Cauthorne, et al.*, 256 NLRB 721 (1981); *SAC Construction Company, Inc.*, 235 NLRB 1211 (1978), enforcement denied 603 F.2d 1155 (5th Cir. 1979). The Board has held that pension plans which are part of an expired agreement and are a part of the employees' terms and conditions of employment survive the expiration of contract. *Id.* Therefore, in the absence of a bona fide doubt of the Union's majority, the Respondent's abatement of its contributions to the pension fund,[11] as well as its other changes in the contract terms governing the employees' wages or terms and conditions of employment, without first bargaining with the Union, constitute additional violations of Section 8(a)(5).

C. *The Amendments Are Not Time-Barred*

The Respondent alleges that under Section 10(b) of the Act, the General Counsel should not have been permitted to amend the complaint at the hearing to allege additional violations of Section 8(a)(5) based on unfair labor practices purported to have occurred more than 6 months after the original charge and the complaint. The Respondent further contends that the unilateral changes were independent of its refusal to bargain and therefore did not relate back to the underlying complaint. The Respondent's contentions are without merit.

To be sure, the better procedure would have been for the General Counsel to have amended the complaint at an earlier point in time. However, counsel explained that the Union did not apprise him of the changes until several days before the hearing, whereupon he immediately contacted the Respondent's counsel on August 28 to advise him of the proposed amendments. Further, contrary to the Respondent's contentions, the violations which were alleged are of a continuing nature and do relate back to the matters set forth in the complaint. See *Schraffts Candy Company*, 244 NLRB 581, fn. 1, 584 (1979). What is more, the Respondent suffered no prejudice by having to litigate these matters for it acknowledged instituting the changes and defended its actions by resort to the same defense used to support its withdrawal of recognition. Accordingly, I conclude that the amendments to the complaint were not time-barred within the meaning of Section 10(b) of the Act.

[11] The Respondent argued that contributions to the pension fund where the collective-bargaining agreement had expired are precluded by Sec. 302(c)(5)(B). The Board and the courts have consistently rejected this defense holding that the 302(c)(5)(B) requirement that trust fund payments be made pursuant to written agreements are met where there is a trust fund agreement underlying the expired contract. *Henry Cauthorne, supra; SAC Construction Co., supra* at 1219. In the present case, a Modification Agreement attached to the parties' contract refers to contributions to the "I.A.T.S.E. National Pension Fund in accordance with the provisions of a Participation Agreement, which is attached hereto. . . ." Although the Participation Agreement was not, in fact, appended to the exhibit, it apparently is the type of trust fund agreement referred to in the cases cited above.

CONCLUSIONS OF LAW

1. Cobb Theatres, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 144, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is now and at all times material herein has been the exclusive representative of the employees of the Respondent for the purpose of collective bargaining within the meaning of Section 9(a) of the Act in the following unit:

> All motion picture machine operators employed by Respondent at its Fare 4 and Frayser 3 Theatres in Memphis, Tennessee.

4. By refusing since on or about October 29, 1980, to bargain collectively with tbe Union as the exclusive bargaining representative of the employees in the above-described unit, by unilaterally failing to make contributions to the union pension fund and by unilaterally changing other wages and rates of pay of its employees, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative actions to effectuate the policies of the Act. Accordingly, having found that the Respondent on or about October 29, 1980, unilaterally altered the wages or rates of pay in the above-described unit, it shall be ordered to restore those wage rates that existed prior to any unilateral change and make the unit employees whole for any losses of pay they may have suffered as a result of such changes, with interest.

Having further found that the Respondent on or about October 29, 1980, unilaterally discontinued making contributions to the union pension fund for the employees in the above-described unit, it shall be ordered to restore making such payments and make whole the unit employees for any losses or expenses they may have suffered as a result of the unilateral change and to pay into the appropriate trust fund all those contributions it failed to pay as a result of the unilateral change, with interest.

Backpay and interest as herein provided shall be computed in the manner prescribed by *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[12]

The Respondent, Cobb Theatres, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to meet and bargain collectively with Local No. 144, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, upon its request, as the exclusive bargaining representative of employees in the following appropriate unit:

> All motion picture machine operators employed by Respondent at its Fare 4 and Frayser 3 Theatres in Memphis, Tennessee.

(b) Unilaterally changing any of the terms and conditions of employment in the above-described unit, including unilaterally discontinuing payments to the union pension fund, without prior consultation and bargaining with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action neccessary to effectuate the purposes of the Act:

(a) Recognize and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Restore the wage rates which existed prior to the unilateral changes made on or after the contract's expiration on August 29, 1981, to employees in the appropriate unit and make them whole for any losses of pay they may have suffered by reason of the unilateral changes in the wage rates in the manner described in "The Remedy" until negotiations result in a new collective-bargaining agreement or an impasse is reached on these issues.

(c) Restore those contributions to the pension fund which existed prior to the unilateral discontinuance of these contributions on or about October 29, 1980, for the employees in the unit described above and make them whole for any loss or expense they may have suffered as a result of the unilateral change and pay into the pension trust fund all those contributions it has failed to pay by reason of the unilateral change in the manner described in "The Remedy," until such time as it negotiates the new agreement with the Union or an impasse regarding this issue.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its place of business in Memphis, Tennessee, copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[12] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."